

HIGH COURT OF GUJARAT**Bench: Ashutosh Shastri and Hemant M. Prachchhak, JJ.****Date of Decision: 12-12-2023**

R/First Appeal No. 2945 of 2019 with Civil Application (for Interim Relief) No. 1 of 2019 in R/First Appeal No. 2945 of 2019

PRATIKSHA D/O ANANTBHAI RATILAL PRAJAPATI**Vs.****KALPESHBHAI BHAGWANBHAI JESALPURA****Sections, Acts, Rules, and Articles Mentioned:**

Section 19 of the Family Courts Act

Section 13 of the Hindu Marriage Act, 1956

Section 41A of the Criminal Procedure Code (CrPC)

Subject : Appeal against the Family Court's decree of dissolution of marriage and the issue of permanent alimony.

Headnotes :

Marriage Dissolution and Permanent Alimony: The High Court modified the Family Court's order, granting a lump sum permanent alimony of Rs.12,50,000 to the appellant, citing the substantial income difference between the spouses and the wife's entitlement to a comparable standard of living. [Paras 12-13, 20-21]

Marital Cruelty and Evidence Misreading: The High Court disagreed with the Family Court's conclusion of cruelty by the wife, finding it unsupported by evidence and indicative of a non-analytical approach. [Paras 8-10]

Irretrievable Breakdown of Marriage: Recognizing the impossibility of reconciliation, the Court decided to modify the original order, acknowledging the irretrievable breakdown of the marriage. [Paras 14, 18-19]

Calculation of Permanent Alimony: The Court considered the current incomes of both parties in determining a fair alimony amount, emphasizing the wife's right to a standard of living similar to that of her husband. [Paras 13, 17, 20-21]

Partial Appeal Allowance: The Court partly allowed the appeal, emphasizing the need for a resolution that ends the ongoing litigation. [Para 21]

Referred Cases with Citations:

- Alka Gupta vs. Narender Kumar Gupta reported in AIR 2011 SC 9 [Para 4.1]

- Rajnesh vs. Neha reported in AIR 2021 SC 569 [Para 16]
- Amit Kumar vs. Suman Beniwal reported in (2021) SCC OnLine 1270 [Para 18]
- Naveen Kohli vs. Neelu Kohli reported in 2006 (4) SCC 558 [Para 19]
- Shilpa Sailesh vs. Varun Sreenivasan reported in 2023 SCC online SC 544 [Para 19]
- Smt. Roopa Soni vs. Kamal Narayan Swami reported in 2023 6 SCALE 402 [Para 19]
- Dr. Nirmal Singh Panesar Vs. Paramjit Kaur Panesar alias Ajinder Kaur Panesal reported in 2023 SCC online SC 1297 [Para 19]

Representing Advocates:

- For the Appellant: Mr. B. J. Trivedi, Advocate

- For the Respondent: Mr. Premal R. Joshi, Advocate

JUDGMENT

Ashutosh Shastri, J. - By way of present First Appeal under Section 19 of the Family Courts Act, a challenge is made to the judgment and decree passed by learned Judge, Family Court No.2, Vadodara dated 16.04.2019 in Family Suit No.753 of 2015.

2. The brief background of the facts which has given rise to the present appeal is that marriage between the appellant and respondent was solemnized on 06.05.2011. The problems later on started in the marital life and according to appellant, the respondent started to treat the appellant with cruelty and it transpires that the appellant went to place of her in-laws i.e. Village - Vadgas near Viramgam after wedding took place at Ahmedabad. After the said marriage, the appellant and respondent went to Kullu Manali and after spending few days came back at the said village and the dispute arose between the parties on account of social set up in different of appellant and respondent, the problems occurred during the marriage span. The details of narration with regard to allege cruelty has been incorporated in the pleadings, but then with a view to sustain the relationship tolerance was maintained by the appellant but then could not resist much which has resulted into taking phenyl in the morning on 10.09.2011 and the respondent took her to the dispensary of Dr. Dixit, the family doctor. Since the health of the appellant deteriorated, she was shifted to Dev Multi Specialty Hospital, where she was administered treatment by one Dr. Parag Rana. The respondent requested not to file complaint with regard to this incident else the respondent would

lose his job and as such the same was not lodged. But later on, the appellant got a job in I.T.I. at Savli on 25.11.2011. The parents of the respondent and his sister and her husband visited Vadodara on the occasion of first marriage anniversary and stayed for approximately ten days, but respondent did not talk with the appellant. So much so that on account of this, according to appellant, there was a demand made of 5 tolas of gold, car etc. and again the incident of beating the appellant took place on 05.09.2013 and the appellant was driven away from matrimonial home. The salary received by the appellant was spent after purchasing of second hand car and the same was allowed to be purchased in the name of the respondent, but the respondent did not like a second hand car and wanted a brand new car. Again the conflict arose on account of these issues which has resulted into leaving the house by respondent on 23.11.2013 by indicating that he is going for his job. However, he went to the house of his sister Hansaben at Ahmedabad, where he stayed for 17 days. The idea of the respondent appeared that the appellant would leave the matrimonial house again. After narrating all these sequences of events, finally it was alleged that appellant was driven out in January, 2014 and with a view to save the marriage, one Medhaben Trivedi, a friend of the appellant, did make an attempt to persuade the respondent on telephone to rejoin but ultimately the said efforts were failed, even the meeting which was also held on 14.04.2014 yielded no positive response. As a result of it, the present respondent initiated the proceeding in the form of Divorce Petition under Section 13 of the Hindu Marriage Act, 1956 before the learned Family Court, Vadodara, which was registered as Family Suit No.753 of 2015 for seeking decree of divorce.

3. The learned Family Court upon pleadings adjudicated the family suit and after hearing and considering the material, the suit came to be allowed and the marriage which was solemnized on 06.05.2011 was ordered to be dissolved by judgment and order dated 16.04.2019 and it is this judgment and order which has been passed by the learned Judge, Family Court No.2, Vadodara, the appellant has preferred present substantive appeal before us. The present First Appeal was admitted and upon the request of both the learned advocates appearing for the respective parties, the matter is taken up for final disposal in which Mr. B. J. Trivedi, learned advocate appearing for the appellant and Mr. Premal R. Joshi, learned advocate appearing for the respondent.

4. Mr. B. J. Trivedi, learned advocate appearing for the appellant has submitted that the impugned judgment and decree which has been passed is not only reflects non application of mind but it is completely misreading of the evidence on record. Hence, the finding be perverse to the record, the same is not sustainable in the eye of law. It has been further contended that the story which has been put up by the respondent is reflecting a separation of material fact and is thoroughly unambiguous and as such the finding arrived at by the Court below are merely on the basis of conjunctures and surmises. Mr. Trivedi, learned advocate has further submitted that evidence on record is also reflecting that there is a constant harassment on the appellant by respondent herein some time immediately after the wedding and the details whereof are clearly reflecting in written statement at Exh.16 as well as clearly reflecting from the deposition at Exh.56 and as such the learned Family Court ought to have appreciated the said assertion in the right spirit having not been done the entire exercise gets vitiated. Hence, the order impugned requires to be quashed and set aside.

4.1. Mr. Trivedi, learned advocate has further submitted that the conclusion arrived at by the court below is not legally sustainable and as such keeping in view the proposition of law laid down by Hon'ble Apex Court in the case of **Alka Gupta versus Narender Kumar Gupta reported in AIR 2011 SC 9** the suit could not have been decided on the basis of conjunctures and surmises and without any complete base. Mr. Trivedi, learned advocate has further submitted that the appellant inflicted cruelty upon the respondent is surprisingly finding though the record is not supporting such view, the learned trial Judge has on the contrary shifted the allegation upon respondent. On the contrary, the endeavor should have been made by the court below to see that parties may reconcile or leave together but here surprisingly this entire duty is bypassed and no such attempt was made. There are serious allegation tried to be leveled inter se but in the absence of any concrete material, the same ought to have been considered particularly when there was no evidence at all. Hence, the entire exercise undertaken by the court below is suffering from the vice of non application of mind.

4.2. Mr. Trivedi, learned advocate has then taken us to the written statement assertion and in juxtaposition has also taken us at length to the evidence on record by reading the deposition just to indicate that the conclusion arrived at by the court below is not well supported by cogent material. It has been submitted that as observed in paragraph 15.1 of the impugned judgment, the

appellant has admitted during her cross examination that she is getting salary of Rs.34,000/- per month. While respondent is getting salary of Rs.46,000/- per month. It has been stated in affidavit of the appellant that her gross salary is of Rs.34,000/-and after deduction the salary would come to only Rs.27,000/-. Thus, despite the fact that salary slip was very much part of the record the conclusion about the income aspect has not been properly considered and this reflects clearly a perversity in the finding arrived at by the court below. As against this, the respondent's income has also not been properly assumed. Hence, the finding arrived at by the court below is perverse to the record, and according to Mr. Trivedi, learned advocate, the present appeal deserves to be allowed by quashing and setting aside the impugned order and on the contrary alimony has to be awarded despite the fact that wife is earning. There is no embargo that simply because the wife is earning she is not entitled for permanent alimony. Of course on the issue of interim maintenance or the maintenance amount, the said aspect is a relevant consideration, but when the learned Judge is dissolving the marriage without awarding any amount of permanent alimony, the entire exercise is thoroughly uncalled for. Accordingly, a request is made to fix the permanent alimony in case the dissolution is affirmed in the alternative. Hence, has requested that case is made out by the appellant to call for an interference.

4.3. Mr. Trivedi, learned advocate has further drawn our attention to one xerox copy of list consisting of some 48 to more number of items which are stated to be in custody of the respondent which were belong to the appellant and as such while considering the overall valuation of these items, the court may appropriately considered and then awarded a permanent alimony in case the order is to be affirmed. Be that as it may, Mr. Trivedi, learned advocate has submitted that since the findings are supportless, an appropriate order be passed in the interest of justice.

4.4. To substantiate his submission, Mr. Trivedi, learned advocate has placed on record the compilation of Criminal Revision Application No.1058 of 2018 for perusal of the Court and out of that, Mr. Trivedi, learned advocate has drawn the observations contained in paragraph 12 of the judgment passed in Criminal Case No.32395 of 2014 and the deposition which has been taken in the said proceeding of Pratikshaben precisely of cross examination and after referring to this, Mr. Trivedi, learned advocate has requested to pass suitable order in the interest of justice.

5. As against this, Mr. Premal R. Joshi, learned advocate appearing for the respondent has vehemently submitted that the order passed by the court below is a detailed order after due analysis of evidence on record and the finding which has been arrived at is in consonance with the relevant record. Hence, no perversity can be assumed out of the finding, even it cannot be agitated by the appellant that there is any non application of mind on the part of the learned trial Judge.

5.1. Mr. Joshi, learned advocate has further submitted that a systematic designed is made by the respondent herein to put the entire family of respondent in to difficult face, the marriage has been solemnized on 06.05.2011 and within a short time, the complaint has been submitted in which after fulfilled trial an order of acquittal came to be passed on 15.07.2017, even against the said order of acquittal, the Criminal Revision Application was filed which also came to be dismissed on 16.04.2018 and then surprisingly another round of complaint is initiated in which one another Criminal Misc. Application No.1058 of 2018 is pending and the same is not filed by the State. Yet another complaint on 07.11.2019 is filed substantially on the very same allegation, so intent is to harass the respondent in any manner and as such when this ill-motive is in mind of appellant no discretion be exercised in favour of the appellant.

5.2. Apart from that, it has been submitted that wife is working as an instructed in I.T.I., a Government Undertaking and is substantially earning and on account of this separate earning, the appellant has shown its attitude towards the respondent. The appellant as well as respondent are residing separately since a very long time and there is an irritable breakdown in the marriage the respondent is serving as Junior Telecom Officer in BSNL and is leaving a life but the attempt of the appellant is to see that the respondent may not be comfortable. This attitude is also clearly visualized by the court below and as such after true analysis of evidence on record, the learned trial Judge has passed an order which reflects no illegality or irregularity of any manner. Hence, no interference is made in appellate jurisdiction.

5.3. Mr. Joshi, learned advocate has then submitted that on the contrary this is a case in which the appellant has executed cruelty upon the respondent and the deposition on record clearly reveals such and as such the appeal may be dismissed. With a view to substantiate his conclusion, Mr. Joshi, learned advocate has drawn our attention to paragraph 12 of Exh.43 from the record and proceeding and then has pointed out from pages 64 - 66 that there is a

difference in deposition as well as police statement and that is the reason why the order of acquittal in specific terms has been passed. Mr. Joshi, learned advocate has submitted that there are decision to the effect that the dissolution of marriage is possible when there reflects a cruelty and to straighten his submission, Mr. Joshi, learned advocate has relied upon following decisions:-

(i) In the case of **G.V.N.Kameswara Rao versus G.Jabilli reported in (2002) 2 SCC 296.**

(ii) In the case of **K.Srinivas Rao versus D.A.Deepa reported in (2013) 5 SCC 226.**

(iii) In the case of **K.Srinivas versus K. Sunita reported in (2014) 16 SCC 34.**

5.4 After referring to these decisions, Mr. Joshi, learned advocate has submitted that in the absence of any irregularity or perversity of any nature, the impugned order may not be disturbed in the interest of justice.

6. As against this, Mr. B. J. Trivedi, learned advocate appearing for the appellant has then submitted that if the salary of both the appellant and respondent are to be considered, there is a stiff difference and the very fact that respondent has administered cruelty is reflecting a mind set which itself tantamounts to a clear example of cruelty. So ultimately, a request is made to modify the decree which has been passed in so far as allegations are concerned and put an end for give quietus to the litigation between the appellant and respondent by fixing lump sum amount of permanent alimony and for that has also submitted that though an attempt was made by the Court to determine an amount, but to some extent the gap was not possible to be breach but the Hon'ble Court can certainly exercise the jurisdiction in this regard and has left it to the discretion of the Court to pass suitable order in the interest of justice.

7. Having heard the learned advocates appearing for the respective parties and having gone through the material on record before arriving at a conclusion, few aspects are not possible to be ignored by this Court.

8. The respondent herein who submitted the proceedings under Section 13 of the Hindu Marriage Act before the learned Family Court, Vadodara which proceedings have been opposed by the present appellant by making certain averments in the written statement at Exh.60 which is reflecting on page 66

of petition compilation. It was emphatically denied that the allegation about present appellant keeping suspicion over the opponent - original applicant with other lady friends were specifically denied. In fact it has been asserted that on account of ill-treatment and torture to the appellant, she was being ill-treated not only by the respondent herein but by the parents as well. Paragraphs 12, 13 & 14 are such specific assertion. It has further been the case that on 05.09.2011 when the phone call came by some lady upon the respondent when inquired into or ask for the respondent - husband has ill-treated the appellant and mentally tortured to that extent that she was constrained to put an end to the life which is resulted into taking phenyl in the morning on 10.09.2011. On account of such incident in question, she was taken to the dispensary of Dr. Dixit, the family doctor where when the health deteriorated further she was admitted in Dev Multi Specialty Hospital, wherein Dr. Parag Rana has treated the appellant for a period of three days. At that juncture, the respondent herein has requested not to file complaint with regard to this incident else he would lose his job. It is only on account of such persistent nothing further was precipitated. Again, it has specifically asserted in paragraph 17 of the reply that there was a demand of gold from the appellant and on account of such grievance, the appellant was drifted by physically torturing on 17.04.2012 at about 10.30 p.m. and she was compelled to sit at a gate of the society up to 11.45 p.m. Again she was persuaded not to do anything and again another incident took place on 05.09.2013 wherein the respondent has given fist below as well as below on stomach and has administered a friend which has again constrained the appellant to drink phenyl but at this juncture, she was not taken to the hospital by the husband and throughout at night the appellant had to vomit and by such incident also, no circumstance improved against the appellant by respondent. This is the manner in which ill-treatment has been specifically asserted on oath by present appellant.

9. Again a further reading of written statement would indicate that there was a demand of car in addition to gold as stated above and when a second hand Ford IKON Car bearing registration No. GJ1KS7813 was purchased in the name of respondent by giving him, he wanted a patty pack brand new car and on that issue also, she was ill-treated and then left the matrimonial home on 23.11.2013. It was noticed later on by the appellant that he has gone to the house of his sister Hansaben at Ahmedabad for a period of 17 days and this was with an intent that ultimately she would leave the matrimonial house. So much so that again he went away from the home and resided as a paying

guest in one Mrudang Society and this is the manner in which specifically it has been attributed that ill-treatment was persistent from the side of present respondent towards the appellant. This version appears to have been substantiated from a deposition on record of the appellant. If these assertions are to be tested on the touch stone of evidence on record except their denial by the respondent, there appears to be nothing much concrete and still surprisingly the learned trial Judge has concluded that there was cruelty on the part of the appellant towards the respondent which has constrained the Court to pass an order of dissolution of marriage. This finding appears to be perverse to the record as it reflects a clear non analysis of evidence on record.

10. Further a perusal of cross examination, reflecting on type page No.118(A), would also include certain aspects which rather supports the case of the appellant and as such if overall material to be looked into, it appears that the conclusion arrived at on the issue of cruelty appears to be reflecting a non application of mind on the part of the learned trial Judge. Even the evidence of father, namely, Anantbhai Ratilal Makwana at Exh.57 is also to some extent supports the version. Hence, the conclusion arrived at by the learned trial Judge on the issue No.1 is found to be not germane.

11. Additionally, a perusal of the reasons which are assigned by the Court below would clearly further indicate that the petition which has been brought by the respondent is mainly on two issues; (i) the desertion; and (ii) cruelty. However, the learned trial Judge has specifically found from the material on record that the issue of desertion is quite premature since two years period is not getting completed and therefore, it was specifically held that the respondent herein is not entitled to get the divorce on the ground of desertion. Thereafter, in a laconic manner the issue of cruelty is dealt with by the Court and without much discussion on it in paragraph 15, it has been submitted that respondent herein has proved that the present appellant has subjected cruelty with him and as such though he has not proved the issue of desertion, he is entitled to get the dissolution of marriage on the issue of cruelty. Now, as discussed above, the issue of cruelty is not properly appreciated nor concluded and the reasons which are assigned are not in consonance with the material on record. Hence, we are of the opinion that the order passed by the learned trial Judge is not sustainable in the eye of law.

12. In respect of the issue relating to permanent alimony, as discussed in paragraph 15 onward, the learned Judge has considered the income criteria of both appellant as well as respondent and on the basis of available material

on record in a laconic manner again denied the permanent alimony mainly on the ground that the appellant suppressed material fact as she was a regular appointee. In the absence of proper material on one hand, the learned trial Judge has submitted that the appellant has suppressed the material fact whereas on the other count, a mere admission of Rs.34,000/- is believed and thereby permanent alimony is refused to the present appellant. When a dissolution marriage is taking place at the instance of the Court one of the most relevant circumstance is the permanent alimony since law is settled that the wife is also equally entitled to leave according to the status in which the husband is residing. Now here though it was specifically concluded that salary of the respondent husband is more than the wife as is evident, but then, refusal outrightly the permanent alimony on a ground which is not supported by material is erroneous in our considered opinion and therefore, qua that issue we deem it proper to examine the matter further.

13. During the course of hearing, when the matter was heard and issue with regard to income was projected by the learned advocates and the learned advocates have thereafter placed on record the respective salary slips for the current years undisputedly the present appellant is working in Industrial Trading Institute, Gandhinagar and her salary bill of November, 2023 is reflecting that she is actually receiving an amount of Rs.42,922/- "in the column actually pay" whereas the husband i.e. respondent herein is serving as a Junior Telecom Officer (Regular - Telecom Services) and according to his pay slip for the month of November, 2023 indicates that he is drawing salary is of Rs.1,29,813/-. On account of deduction, the take home pay is reflecting as Rs.76,481/-, but nonetheless these slips which are produced voluntarily by the learned advocates appearing for the respective sides indicate that practically husband is having approximately almost double the salary then the wife is earning. So in view of the principle, the wife is also equally entitled to the same comforts in the life, the same security and leaving standard should be as per the status of the husband, it appears that non granting of permanent alimony to the appellant wife would be a clear injustice and as such we are of the considered opinion that the appellant deserves the permanent alimony if ultimately the dissolution of marriage decree is to be sustained.

14. As we have brought to the notice by learned advocates of both sides that on account of serious rift between the appellant and the respondent and irretrievable breakdown of the marriage has resulted and both the appellant

and respondent are residing since number of years at one point of time during the course of hearing, we tried to persuade both the appellant and respondent to re-join the matrimonial life, but having due deliberation by both the parties in presence of their advocates it has been found that the same is impossible and both practically have decided and determined not to re-join the matrimonial life and as such we found that irrespective of the conclusion on the order which has been impugned the marriage ultimately has been broken down irritably.

15. Now in view of these circumstances, a broad submissions were made by the learned advocates that since the appellant and respondent are not in a position to reside together and it is practically impossible to sustain the marriage life have requested that instead of setting aside the impugned order the same be modified by fixing some lump sum amount and irrespective of allegations inter se the order impugned may be modified.

16. Since this is the situation emerged before us we took into consideration the proposition and the approach found from the decision delivered by Hon'ble Apex Court and come to the conclusion to modify the impugned order instead of setting aside the entire order. Since we have adopted such course of action on the basis of proposition, we deem it proper to quote hereunder the relevant observations contained in the decision delivered by the Hon'ble Apex Court in the case of **Rajnish versus Neha reported in AIR 2021 SC 569** wherein Hon'ble Apex Court has made certain observations on the issue of permanent alimony as well as on the issue as to fix an amount of maintenance when the wife is earning to some income. We deem it proper to quote hereunder since we have considered the same:-

"(k) A professional Marriage Counsellor must be made available in every Family Court. Permanent alimony

(i) Parties may lead oral and documentary evidence with respect to income, expenditure, standard of living, etc. before the concerned Court, for fixing the permanent alimony payable to the spouse.

(ii) In contemporary society, where several marriages do not last for a reasonable length of time, it may be inequitable to direct the contesting spouse to pay permanent alimony to the applicant for the rest of her life. The duration of the marriage would be a relevant factor to be taken into consideration for determining the permanent alimony to be paid.

(iii) Provision for grant of reasonable expenses for the marriage of children must be made at the time of determining permanent alimony, where the custody is with the wife. The expenses would be determined by taking into account the financial position of the husband and the customs of the family.

(iv) If there are any trust funds / investments created by any spouse / grandparents in favour of the children, this would also be taken into consideration while deciding the final child support.

7-111 Criteria for determining quantum of maintenance

(i) The objective of granting interim / permanent alimony is to ensure that the dependant spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

The factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependant children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife.

(c) Where wife is earning some income The Courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The Courts have provided guidance on this issue in the following judgments.

In *Shailja & Anr. v Khobbanna*, this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The Court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home.

40 Sustenance does not mean, and cannot be allowed to mean mere survival.

In *Sunita Kachwaha & Ors. v Anil Kachwaha* the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

The Bombay High Court in *Sanjay Damodar Kale v Kalyani Sanjay Kale* while relying upon the judgment in *Sunita Kachwaha (supra)*, held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.

An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in ***Chander Prakash Bodhraj v Shila Rani Chander (2018) 12 SCC 199***. See also Decision of the Karnataka High Court in ***P. Suresh v S. Deepa & Ors., 2016 Cri LJ 4794. Chaturbhuj v Sita Bai, (2008) 2 SCC 316. Vipul Lakhnupal v Smt. Pooja Sharma, 2015 SCC OnLine HP 1252.*** (2014) 16 SCC 715. 2020 SCC OnLine Bom 694. Prakash. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the Court.

This Court in *Shamima Farooqui v Shahid Khan* cited the judgment in *Chander Prakash (supra)* with approval, and held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife."

17. In view of aforesaid observation which has been made, we are of the opinion that appellant wife is entitled to have an amount of permanent alimony when the marriage is getting dissolved.

18. On another judgment, which we deem it proper is quote hereunder is the decision delivered by Hon'ble Apex Court in the case of ***Amit Kumar versus Suman Beniwal reported in (2021) SCC OnLine 1270*** which judgment is considered by us in one of the decision delivered by us on 02.11.2023 in case of *Krishnaben W/O Dhairya Dinesh Panchal versus Dharrya Dinesh Panchal* passed First Appeal No.2699 of 2023, paragraph 11 we deem it proper to quote hereunder:-

"11. The Hon'ble Apex Court in the case of **Amit Kumar Vs. Suman Beniwal reported in 2021 SCC online 1270** though observed that the institution of marriage is to be saved by preventing hasty dissolution of marriage, but at the same time once the parties have separated and separation has continued on account of irretrievable break down since last seven years, in such a situation the Apex Court taking the aid of judgment reported in the case of Naveen Kohli (supra) has also find otherwise that once the marital bond between the husband and wife is come to irretrievably break down, then in that circumstance, without litigating further if the parties have come to an amicable settlement and mutually agreed to give up their marital rights and to divorce from the marital relationship, the same is not against the law."

19. Additionally the decisions delivered by the Hon'ble Apex Court in the cases of **Naveen Kohli vs. Neelu Kohli reported in 2006 (4) SCC 558**, **Shilpa Sailesh vs. Varun Sreenivasan reported in 2023 SCC online SC 544**, **Smt. Roopa Soni vs. Kamal Narayan Swami reported in 2023 6 SCALE 402**, and **Dr. Nirmal Singh Panesar Vs. Paramjit Kaur Panesar alias Ajinder Kaur Panesal reported in 2023 SCC online SC 1297** have also been considered by us while taking the view in present proceedings and with a view to avoid unnecessary burden of present order, we without quoting the observations deem it proper to refer these aforesaid judgments while disposing of present proceedings.

20. In view of aforesaid proposition of law and in view of the circumstances prevailing on record, when it is noticed by us that marriage is completely broken down and there is no possibility of restoration of marriage life between the appellant and the respondent, we are of the opinion that present proceedings are required to be disposed of in a larger interest of justice and to give quietus to the litigation inter se between the parties, we are of the opinion that permanent alimony in the lump sum is required to be fixed while confirming the decree of dissolution of marriage. We hereby also not approved the allegation and counter allegation made by both the parties to the proceedings since the proceedings are to be terminated by passing a modified order.

21. During the course of deliberation, we found that the appellant and respondent have stuck up to a particular figure and the appellant wife wanted approximately an amount of Rs.15,00,000/- since there was an issue with regard to stridhan, whereas, the respondent husband had conveyed that

beyond an amount of Rs.7,50,000/-, the respondent is either unable or not inclined to proceed ahead. So in this situation, comparing with the latest salary slips which have been voluntarily produced before us and in the context of overall discussion, keeping in view the best interest of both, the appellant and respondent and to put the quietus to the litigation, we are of the opinion that Rs.12,50,000/- is an amount which deserves to be paid to the appellant by way of permanent alimony, while confirming the decree of desolation of marriage. Hence, to this extent the order impugned is required to be modified while disposing of present appeal. Hence, following order would meet the ends of justice:-

(i) The impugned order dated 16.04.2019 is hereby modified by observing that marriage solemnized on 06.05.2011 between appellant - Pratikshaben, daughter of Anantbhai Ratilal Prajapati and respondent - Kalpeshbhai Bhagwanbhai Jesalpura stands dissolved from the date of passing of present order and as a consequence thereof the respondent is required to pay a permanent alimony to the appellant to the extent of Rs.12,50,000/- and the same shall be paid within a period of THREE WEEKS from now.

(ii) Present First Appeal is partly allowed.

(iii) Since the main First Appeal is partly allowed, connected Civil Application stands disposed of accordingly.

(iv) Parties to bear their own cost. Decree to the aforesaid extent to be drawn accordingly.

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